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9-19-91

OUTSTANDING ISSUES AS OF SEPTEMBER 19, 1991

Medley Farm Superfund Site -- RD/RA Negotiations



I. The Consent Decree

1. Participation by McKesson Corporation, Unisphere Chemical Corporation, and Specialty Industrial Products, Inc.
- Rof* 2. Date on which notice of the final plan was published -- Ralph please determine (see p. 4).
3. Definition of "Performance Standards" -- should it include Alternative Performance Standards as determined under the SOW? (See p. 9).
4. The number of days following EPA's issuance of an authorization to proceed within which the Settling Defendants must submit their RD Work Plan. The Consent Decree currently says 60 days. This is also true for the Health and Safety Plan. (See p. 15).
- mostly resolved* 5. The documents to be included in the RD Work Plan, e.g., the intermediate design, need to be finalized. (see p. 15-16).
6. The documents to be included in the preliminary design submittal need to be finalized (see p. 16).
- resolved* 7. We need to decide whether the intermediate design is going to be eliminated. (see p. 16-17).
8. Additional Response Actions: the PRPs have requested that there be a limitation on the requirement that they perform any additional response actions if there is a ROD amendment. (see p. 21).
- Rof* 9. EPA Periodic Review: the PRPs have requested that the section be amended to reflect that they need not perform additional studies or remedial work at the Site if a five year review indicates a need for more studies and/or work. (see p.22-23).
10. The PRPs want the sentence added by the government regarding their responsibility for ensuring that the lab performs adequately removed. Adam will take out the sentence if we change all of the "assures" back to "requires." (see p.25-26).
11. EPA would like the progress reports submitted beginning with the lodging of the Consent Decree and not the entry. (see p.29).
12. The PRPs have asked if it is necessary to send three copies of the submittals to the State. Ralph has committed to



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contacting the State to determine if three copies are necessary and to get the contact person's name, address and phone (if it is not Mr. Haynes) (see p. 31).

13. The PRPs have requested that the Agency be required to provide notice to them if EPA modifies a document and the reasons for such modification. (see p. 31-32)
14. They would like stipulated penalties when EPA has modified a first round draft to begin accruing on the date they receive notice of the modification, not the date the first draft is submitted. (see p. 32).
15. The PRPs would like to specify the type of guaranty or other financial assurance -- or was there some other issue here? (see p. 35-36).
16. The PRPs would like to limit the right of EPA to seek increases or changes in the financial assurance by tying it to an estimate of the increase in the cost of the project. (see p. 37).
17. The PRPs want to remove the phrase "and the Performance Standards have been achieved" from the certification of completion determination by EPA. (see p. 39).
18. The Consent Decree requires the Settling Defendants to do additional work identified by EPA in making the completion determination. The PRPs have suggested that the paragraph only require that they negotiate about such work. (see p. 40).
19. The Consent Decree requires that the PRPs establish and fund an escrow account in several instances. The PRPs want to have this requirement removed. (see p. 44).
20. We need to finalize the amount of cgl and auto insurance the PRPs will maintain. (see p. 47).
-  21. The PRPs object to having force majeure notice requirements begin with when they knew or should have known. (See p. 49) and also want the word "may" changed to "will likely" when defining force majeure. (see p. 49).
22. The PRPs have questioned the inclusion of the definition of the types of disputes that are subject to admin. law and the admin. record. This will be explained by Larry Groner. (see p. 53)
-  23. The PRPs will submit suggested language regarding the submission of position papers in dispute resolution. They are proposing that EPA should be required to submit documents so long as they fall within EPA guidances. (see p. 54).

24. The amounts of stipulated penalties needs to be finalized and the periods for which they apply (see p. 57).
25. The documents for which stipulated penalties apply need to be finalized (see p. 58).
26. The PRPs have asked that EPA remove paragraph 71 which has a drop dead penalty if the PRPs fail to complete the project (see p. 58).
27. The PRPs want the start of stipulated penalties to be tied to some type of notice (see p. 59).

## II. The Scope of Work

[to be completed following negotiations on Sept. 19th]